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December 16, 2020

David J. Smith
Clerk of Court
Eleventh Circuit Court of Appeals
56 Forsyth Street, N.E.
Atlanta, Georgia 30303

RE: *Demarcus Sears v. Eric Sellers, Warden*, No. 18-13467-P

Dear Mr. Smith:

This letter is in response to the “supplemental authority” filed by Demarcus Sears’ counsel on December 16, 2020. The body of this letter contains 349 words.

1. *Andrus v. Texas*, No. 18-9674, 2020 U.S. LEXIS 3250 (June 15, 2020): *Andrus* is both factually and procedurally distinguishable from Sears’ case. First, *Andrus*’ ineffective-assistance claim was not reviewed under the AEDPA. Second, the mitigating evidence is substantially different. Third, *Andrus* was remanded to the trial court for a prejudice determination.
2. *Shinn v. Kayer*, No. 19-1302, 2020 U.S. LEXIS 6092 (Dec. 14, 2020): The Warden concurs that *Shinn* is applicable to this case for the reason stated by Sears—i.e. when there is a state court merits decision on both *Strickland* deficiency and prejudice, the decision on each prong must be independently assessed under 28 U.S.C. § 2254(d). Additionally, *Shinn* reaffirmed that, “[t]he prisoner must show that the state court’s decision is so obviously wrong that its error lies ‘beyond any possibility for fairminded disagreement.’” *Shinn*, 2020 U.S. LEXIS 6092, at *10 (quoting *Harrington v. Richter*, 562 U.S. 86, 103, 131 S. Ct. 770, 786-87 (2011)). The Court reversed the Ninth Circuit’s grant of relief because, in part, Kayer’s new mitigating evidence of bipolar disorder and alcohol addiction could cause “reasonable jurists [to] debate the extent to which these

factors significantly impaired his ability to appreciate the wrongfulness of his conduct or to conform his conduct to the law at the time of the murder.” *Shinn*, No. 19-1302, 2020 U.S. LEXIS 6092, at *14.

3. *Reeves v. Commissioner*, No. 19-11779, 2020 U.S. App. LEXIS 35472 (11th Cir. Nov. 10, 2020). *Reeves* is distinguishable. In *Reeves*, the state court unreasonably “concluded” under *Strickland* that “that Mr. Reeves’ ‘failure to call his attorneys to testify [was] *fatal to his claims*.’” *Reeves*, 2020 U.S. App. LEXIS 35472, at *25 (emphasis added). No such holding exists in this case. Additionally, Reeves had—*inter alia*—extensive mental health records prior to committing his crimes and borderline intelligence functioning. *Id.* at *36-38. Sears alleged mitigating evidence is much weaker.

Thank you for your consideration.

Sincerely,

/s/ Sabrina D. Graham
Sabrina D. Graham
Counsel for Appellee

cc: Jill Benton